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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DENNIS CYRUS, JR.

Defendant.

No. CR 05-00324 MMC

~~PROPOSED~~ ORDER FORMING A RE:
"TAINT TEAM" APPOINTMENT AND
PROCEDURES

ORDER

To comply with the limitations of Rule 12.2 and this Court's orders, the government has assembled a "taint" team (1) to coordinate with the defense the timing and scope of any mental health examinations and testing of the defendant conducted by the government's experts; (2) to litigate issues concerning the scope of such mental health examinations and testing, as well as the sufficiency of the expert witness disclosures made by the defendant to date, if it becomes necessary to do so; and (3) to communicate with the government's experts following any

1 examination or testing of the defendant to insure that information obtained during the scope of
2 such examinations or testing is not prematurely and improperly disclosed to members of the
3 prosecution team.

4 Having reviewed the Notice of Formation of a Taint Team, filed by the government, and
5 having considered opposition thereto, it is hereby ORDERED that:

6 1. The taint team shall consist of two Assistant United States Attorneys (the “Taint
7 Team.”). The Assistant United States Attorneys from the Northern District of California
8 Oakland office are Douglas Sprague and Christine Wong.

9 2. The following restrictions will apply to all documents, records and
10 information disclosed by the defendant to the Taint Team that relate to Rule 12.2 examinations
11 of the defendant, as well as all documents, records and information obtained or developed by any
12 expert working with the Taint Team regarding the Rule 12.2 examinations of defendant:

13 a. The documents, records and information shall
14 be disclosed only to (i) the Taint Team; (ii) ~~if necessary, any~~ additional individuals in the United
15 States’ Attorney’s Offices ^{other than the Northern District} and in the Department of Justice in Washington, D.C. not connected to
16 ^{provided such disclosure is first approved by the Court} the trial team, as necessary to assist the Taint Team in this case; and (iii) any expert(s) working
17 with them. Each of the foregoing will be an “authorized individual” for the purpose of this
18 stipulation and protective order. The Taint Team will maintain a list of the names of any
19 authorized individual and shall require each authorized individual to read and sign a certification
20 referred to in subparagraph “e” below.

21 b. The foregoing documents, records and information regarding the
22 examinations of the defendant will not be disclosed by any authorized individual, directly or
23 indirectly, to Assistant United States Attorneys William Frentzen, Robert David Rees, Jim Chou,
24 and Brian Stretch, First Assistant United States Attorney David Anderson, United States
25 Attorney Joseph P. Russoniello, or to any other attorney, staff member, agent, expert or
26 consultant working for or with them (the “Prosecution Team”) in connection with the
27 prosecution of this case during the period that the firewall is in effect.

28 c. The foregoing documents and records and information shall be

1 used by each authorized individual solely for the purpose of this case. Each authorized
2 individual shall not divulge the documents, records or information to anyone who is not an
3 authorized individual during the period that the firewall is in effect.

4 d. Submissions to the Court referring to the foregoing documents,
5 records or information shall be filed (i) at least temporarily under seal, and (ii) be served only on
6 defense counsel and the Taint Team.

7 e. Each authorized individual shall file, under seal, a statement under
8 oath which represents that he or she has read a protective order reflecting the terms under which
9 the Taint Team and all Authorized Individuals must operate and which recognizes that a willful
10 violation of it may be deemed a civil and/or criminal contempt.

11 f. If an authorized individual learns of a possible violation of this
12 order, he or she shall inform the Court promptly.


13 g. If, at any time during which the firewall is in effect, the Taint Team
14 believes that the information produced to them need not be protected by the firewall, they may
15 petition the Court for review pursuant to the procedure in subparagraph “d” above for a
16 determination whether the information should be protected by the firewall according to the terms
17 of this stipulation.

18 h. The firewall shall remain in effect until ^{otherwise ordered by the Court.} ~~a guilty verdict is rendered~~
19 ~~by the jury.~~ Following notification by defendant’s counsel to the Taint Team regarding whether
20 any, and what, expert evidence produced to the Taint Team the defense will present in the
21 penalty phase of the trial, the Taint Team will then reveal the information produced to them by
22 the defense and developed by the Government’s experts and related Taint Team’s investigation
23 to any other Government attorney or employee. If, based on the notice provided by the defendant
24 ~~after any~~
~~at the time of the~~ guilty verdict, the defendant chooses not to present any particular expert
25 evidence that was produced to the Taint Team, then the Taint Team shall seal said evidence and
26 shall not disclose said evidence to the Prosecution Team until further order of Court. If the Taint
27 Team believes that the evidence should nonetheless be available to any other Government
28 attorney or employee, the Taint Team will petition the Court according to the procedure in

1 subparagraph "d" above for a determination whether the evidence in question should be
2 unsealed.

3 3. The terms of this firewall will apply only to this case.

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5 SO ORDERED, this 17th day of September, 2008.

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9 HON. MAXINE M. CHESNEY
10 UNITED STATES DISTRICT JUDGE
11 NORTHERN DISTRICT OF CALIFORNIA
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